Supreme Court, U.S.
FILED

951366 FEB 26 1996

(1)

CASE NO. 95-

in the Supreme Court of the United States

OCTOBER TERM, 1995

ANNA HANLIN
and
JOHN G. HANLIN,

Petitioners,

vs.

AMERICAN GENERAL FINANCE INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

ANNA HANLIN
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Petitioners
In Propria Persona

26 pp

QUESTIONS PRESENTED FOR REVIEW

1. Is a person denied procedural due process by posting and mailing of a summons and complaint when this method of service under the circumstances is not reasonably calculated to reach those who could easily be informed by other means at hand and is not reasonably calculated to appraise interested parties of the pendency of the action and afford them an opportunity to be heard?

2. Must the statutory requirements of a state for service of process be strictly complied with before the drastic procedure of posting and mailing of the summons and complaint is able to be utilized and in order to obtain personal jurisdiction over a person?

3. Is there an arbitrary refusal to allow an individual the right to judicial process and access to the courts when a person is denied a property interest without a hearing because of failing to follow unwritten "local procedures?"

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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Jonathan Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution (1836) 12,13

Petitioners Anna Hanlin and John G. Hanlin respectfully petition the Court to issue a writ of certiorari to the Supreme Court of the State of California in the case of Hanlin v. American General Finance, No. SO50831 (February 14, 1996), and show the following.

OPINIONS BELOW

There are no official or unofficial reports of the opinions delivered in this case by other courts. Copies of the opinions of the Municipal, Superior, Court of Appeal and Supreme Court of the State of California are reproduced in the appendix to this Petition.

JURISDICTION

The date of entry of the judgment of the Supreme Court of the State of California sought to be reviewed is February 14, 1996. There is no right to a rehearing or an order respecting a rehearing. The statutory provision conferring jurisdiction on this Court to review the judgement by writ of certiorari is 28 U.S.C. § 1257.

The United States Supreme Court will review decisions "rendered by the highest court of a State in which a decision could be had." 28 U.S.C. §1257. If the highest state court denies discretionary review, the United States Supreme Court has jurisdiction to review the decision of the intermediate court. *Bandini Petroleum Co. v. Superior Court* 284 US 8, 14 (1931).

A state court judgment finally disposing of a writ petition is a final judgment reviewable under 28 U.S.C. § 1257. See, *Madriga v. Superior Court* 346 US 556, 74 S Ct 298, 98 L Ed 290 (1954). In California writ proceedings, the California

Supreme Court is the highest state court available. Thus, review is proper in the United States Supreme Court. CEB, *California Civil Writ Practice,* (2nd edition, update 1995) §§ 12.15-12.16, pp 471-472.

When the original petition for writ of mandate or prohibition was to a superior court and challenged a pending municipal court action, review is obtained by filing a new petition for extraordinary writ in the court of appeal. *Shortridge v. Municipal Court* 151 Cal. App.3d 611, 614 (1984); *Chavez v. Superior Court* 153 Cal. App. 3d 130, 132 (1984); *Strand Prop. Corp. v. Municipal Court* 148 Cal. App. 3d 882, 866 n4. (1983).

Review of a decision concerning a judicial order made in a case pending in the municipal court and challenged by mandate or prohibition is by a new writ filed in the next higher court, the court of appeal. *Heldt v. Municipal Court* 163 Cal. App. 3d 532 (1985); *Andrus v. Municipal Court* 143 Cal. App.3d 1041, 1046 (1983).

After a decision of the court of appeal becomes final as to that court concerning a writ case, a party may petition the California Supreme Court for review. The petition may be filed on summary denial of a writ petition. Review of a court of appeal decision concerning a writ petition is by a petition for review in the California Supreme Court. CEB, *California Civil Writ Practice , supra*, § 1071, p. 437.

Supreme Court review is not limited to a decision of the court of appeal on the merits. The Supreme Court can also grant review of orders summarily denying writ petitions. See, California Rules of Court, Rule 28; Eisenberg, Horovitz & Wiener, *CAL. PRAC. GUIDE: CIVIL APPEALS & WRITS* (The Rutter Group 1995) § 13.12, p.13-2.

If the case was summarily denied in the court of appeal, the Supreme Court can grant review and transfer to the court of appeal with directions to issue an alternative writ. *Newman v. Superior Court* 179 Cal. App.3d 377, 380 (1986).

Alternatively, the Supreme Court can grant review and issue an alternative writ returnable before the California Supreme Court, in which case a return is filed. CEB, *California Civil Writ Practice* (2nd edition, update 1995) § 1072, p. 437-438.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

U.S. Const. amend. XIV, § 1, says at its pertinent part "nor shall any State deprive any person of life, liberty, or property, without due process of law." Statutory notice under California law contravenes the requirements of the Fourteenth Amendment and petitioners are to be deprived of property without due process of law.

The California statute at-issue is Code of Civil Procedure § 415.45. Code of Civil Procedure § 415.45 fails to meet the minimum requirements of due process in that it does not provide proper notice that a proceeding has been commenced against a party and that the action will deprive a party of his property.

Code of Civil Procedure § 415.45 provides for service of a summons and complaint by posting and mailing, if the party cannot be served with reasonable diligence by any other manner allowed for service, other than publication:

"(a) A summons in an action for unlawful detainer of real property may be served by posting if upon affidavit it appears to the satisfaction of a court in which the action is pending that the party to be served cannot with reasonable diligence be served in any manner specified in this article other than publication and that ..." *(West's Code Civ. Proc.* § 415.45(a)*)*

STATEMENT OF THE CASE

A. The Municipal Court Proceedings Below

On August 16, 1995, Real Party in Interest, American General Finance Inc. ("American General") filed an action in the Municipal Court of the State of California, County of Santa Clara, Santa Clara Facility ("Municipal Court") against petitioners John G. Hanlin and Anna Hanlin ("Petitioners"), Civil Action No. DC 95 315160.

Pursuant to American General's ex parte application for service of process on Petitioners by posting and mailing the summons and complaint, the Municipal Court on August 30, 1995 entered an order allowing service by posting and mailing.

American General then purported to serve the Petitioners by posting and mailing the summons and complaint. Before the date of any responsive pleading being required to be filed by Petitioners, American General prematurely entered the default of Petitioners. The property was wrongfully posted with an Eviction Notice and a Writ of Possession by the Sheriff on September 14, 1995.

On September 14, 1995, Petitioners each filed separate motions to quash service of the summons and complaint. In

this first stage of the proceedings, the federal questions to be reviewed were raised by Petitioners' motions to quash service.

On September 21, 1995, the Municipal Court entertained Petitioners' separate motions to quash service of summons and complaint. At the conclusion of the hearing, the Municipal Court denied the motions of Petitioners to quash service of summons and complaint. (Appendix A).

B. The Superior Court Proceedings Below

Pursuant to Code of Civil Procedure section 418.10(c), Petitioners on October 2, 1995 properly served and timely filed with the Superior Court of Santa Clara County ("Superior Court") a Petition for Peremptory Writ of Mandamus and/or Prohibition ("Petition for Peremptory Writ").

American General filed opposition to the Petition for Peremptory Writ and only addressed the merits of Petitioners' Petition for Peremptory Writ.

On October 24, 1995, American General filed an Ex Parte Application for Order Setting Hearing on Shortened Notice and/or Order to Show Cause Why Petition Should Not be Dismissed, and for Sanctions Under CCP 128.5. The ex parte application was on the grounds that "Petitioners filed their Petition for Peremptory Writ of Mandamus and/or Prohibition on October 2, 1995, and have failed to set a hearing or take any other steps to have their Petition heard by this Court as required by local procedure."

On October 24, 1995, the Superior Court issued an Order to Show Cause setting a hearing for October 31, 1995 as to

why Petitioners' "Petition for Peremptory Writ of Mandamus and/or Prohibition, should not be dismissed for failure to follow local court procedures."

On October 30, 1995, Petitioners filed and then delivered to the Superior Court an endorsed filed courtesy copy of Petitioners' Opposition to Order to Show Cause re Dismissal of Petition for Peremptory Writ of Mandamus and/or Prohibition and for Award of Monetary Sanctions.

On October 30, 1995, Petitioners filed a Notice of Motion for Order Issuing A Peremptory Writ of Mandamus and/or Prohibition. The Clerk of the Respondent Superior Court set a hearing for November 30, 1995 for the hearing of the Notice of Motion for Order Issuing a Peremptory Writ of Mandamus and/or Prohibition.

On October 31, 1995, the Superior Court held a hearing on the Order to Show Cause. The Superior Court on October 31, 1995 issued a Notice of Ruling dismissing the petition for Peremptory Writ of Mandamus and/or Prohibition for "failure to follow local procedures." (Appendix B).

The dismissal by the Superior Court of Petitioners' petition for "failure to follow local procedures" is invalid under due process or equal protection standards. The Superior Court may not apply "local procedures" not contained within any written rules to totally deprive a party of the right to appellate review and access to the courts.

C. The Court Of Appeal Proceedings Below

On November 13, 1995, Petitioners timely filed a Petition for Writ of Mandate, Prohibition or Other Appropriate Relief before the Sixth District Court of Appeal.

The federal questions to be reviewed were raised by Petitioners. The appellate court initially required American General to submit written opposition to the petition, but subsequently denied the petition without opinion on December 13, 1995. (Appendix C).

D. The Proceedings Of The Supreme Court of California Below

On December 26, 1995, Defendants timely filed and served a Petition for Review with the Supreme Court of California. The Petitioners raised the federal questions to be reviewed by this Court before the California Supreme Court. The Supreme Court of California subsequently denied the Petition for review on February 14, 1996. (Appendix D).

This petition is timely filed and served. Petitioners raised in the court of first instance and to the highest appellate court, the federal questions sought to be reviewed. Unless the relief requested herein is granted, Petitioners will be irreparably harmed.

LEGAL ARGUMENT: REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

A. Important Questions Of Law Which Should Be Settled By This Court

This controversy questions the constitutional sufficiency of California's statute allowing for posting and mailing of the summons and complaint. Petitioners challenge the constitutionality of California's statute and procedures under the Due Process Clause of the Fourteenth Amendment.

Due process requires the government to give notice to individuals of government actions which would deprive those individuals of a constitutionally protected life, liberty, or property interest. When a court (even in a case where no government agency is a party) considers terminating or impairing an individual's constitutionally cognizable life, liberty, or property interest, notice must be given to the individual whose interest is at stake in the proceeding.

The form of the notice and the procedure for delivery or posting of the notice must be reasonably designed to insure that the interested parties in fact will learn of the proposed adjudicative action. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)

The California statutory notice is inadequate because it is not reasonably calculated to reach those who could easily be informed by other means at hand. When notice is a person's due, process which is a mere gesture is not due process. *Mullane v. Central Hanover Bank & Trust Co., supra.*

The Municipal Court issued an order that Petitioners could be served by posting and mailing. Section 415.45 of the California Code of Civil Procedure provides for service of a summons and complaint by posting and mailing, if the party cannot be served with reasonable diligence by any other manner allowed for service, other than publication.

American General failed to use "reasonable diligence" to serve Petitioners personally or by substituted service at

Petitioners' respective places of business prior to obtaining a court order allowing service by posting and mailing. American General has always known of Petitioners' places of business and was required to utilize this preferable method of service prior to obtaining an order allowing for posting and mailing. American General loaned Petitioners over $80,000.00 based on Petitioners' employment and after verifying Petitioners' places of employment.

The Municipal Court even acknowledged that it granted American General's ex parte application for an order to allow posting and mailing without the requirements of Code of Civil Procedure Section 415.45 being met.

The requirements of section 415.45 that a party cannot with reasonable diligence be served except by publication calls for an evidentiary showing by the plaintiff that sufficient efforts to serve by one or more of the better methods (e.g. personal service, abode service, place of business service) have been utilized before a plaintiff may resort to the drastic procedure of posting and mailing.

The term "reasonable diligence" denotes a thorough, systematic investigation and inquiry conducted in good faith by a party or his agent or attorney. *Vorburg v. Vorburg* 18 Cal.2d 794, 797 (1941); *Rue v. Quinn* 137 Cal. 651, 657 (1902).

A number of honest attempts to learn of defendant's whereabouts or his address by inquiry of relatives, friends and acquaintances, or of his employer, must be attempted before resorting to service by posting and mailing. These are the likely sources of information and must be utilized before posting in mailing.

Equally important, "reasonable diligence" must be determined by the facts of each case. American General as a large commercial finance institution was required to make an investigation and inquiry of Petitioners' places of business.

Although American General has over $60 billion in assets, not one inquiry was made by American General or American General's attorney regarding Petitioners' place of employment prior to obtaining the order for allowing posting and mailing. This is true even though American General concedes that it has the phone numbers of Petitioners' places of business. By merely calling the Petitioners' places of business, one question by American General would have provided information as to the street address, if American General does not truly have such information.

Where American General with $60 billion in assets failed to take one step which patently appeared to hold most promise for locating the Petitioners, American General failed to exercise that quantum of diligence as would justify resort to service by posting and mailing.

Also, the mandates of the legislature for service of the summons and complaint must be strictly complied with in order to obtain personal jurisdiction over the Petitioners. If service of process is defective, the court does not acquire jurisdiction over the Petitioners, and the Municipal Court should have granted the Petitioners' motions to quash.

American General should be required to meet the minimum requirements of procedural due process in order to pursue its action against Petitioners. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Another important question which should be settled by this Court is the right to access to the courts. The dismissal of Petitioners' petition before the Superior Court for failure to "follow local procedures" is invalid under even the most minimal due process or equal protections standards. If state law allows persons to bring suit in state court to redress alleged grievances, it cannot arbitrarily deny an individual the ability to use judicial procedures. The state court ruling denying Petitioners a constitutionally protected property interest to use the statutory procedure for redress without a hearing violates due process. *Logan v. Zimmerman Brush Co.* 455 U.S. 422 (1982). This Court should address this significant issue in terms of a right of an individual to access to the courts.

B. The Present Decision Is In Conflict With Applicable Decisions Of This Court

In *Mullane v. Central Hanover Bank & Trust, Co., supra,* this Court said concerning protection provided by the Due Process Clause of the Fourteenth Amendment: "The statutory notice to known beneficiaries is inadequate not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hands."

This portion of the *Mullane* decision is directly opposite the decision in the present case. The decision of the California Supreme Court violates due process rights protected by the Fourteenth Amendment.

In *Greene v. Lindsey* 456 U.S. 444 (1982) this Court said concerning the protection provides by the Due Process Clause that the posting of an eviction action on the door of an apartment was insufficient to meet due process standards.

This Court has previously held that the state must give notice by personal service to both the owner and mortgagee of property before conducting a sale of the property for non-payment of taxes, or a condemnation proceeding when the name of the owner is known to, or easily ascertainable. *Mennonite Board of Missions v. Adams* 103 S. Ct 97 (1983) *Schroeder v. New York* 371 U.S. 208 (1962) *Walker v. Hutchinson* 352 U.S. 112 (1956).

The framers of the Constitution intended that its principles would apply equally throughout the nation. James Madison in presenting to the first Congress a Bill of Rights, which included the Due Process Clause of the Fifth Amendment, assigned as one of the principal purposes of his amendments obtaining an equality of those rights for persons in all of the states. 1 *Annals of Cong.* 439 (Joseph Gales ed., 1789). The proponents of the Fourteenth Amendment recognized that its Due Process Clause was taken from the Fifth Amendment and presented as one of its purposes that "all shall be protected alike in life, liberty and property." Remarks of Senator Jacob Howard, *Cong. Globe,* 39th Cong., 1st Sess. 1089 (1866).

Under the present conflict among the decisions of this Court and the Supreme Court of California constitutional rights are not being protected alike for all persons in the several states. Rather those rights depend upon the location of residence and the state setting the controlling precedent for the state in which the person resides. Unequal application of the constitution can only engender disrespect for the rule of law and the judicial process.

A primary function of the Supreme Court, as envisioned by the founders of the republic, was as a superintending power to secure uniformity in the exposition of the

Constitution, laws and treaties of the United States. Remarks of James Madison as reprinted in 3 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 532 (1836), (hereafter, Elliot, *Debates*) and remarks of Edmund Pendleton, president of the Convention of the Commonwealth of Virginia, on the adoption of the federal constitution, reprinted at 3 Elliot, *Debates* 518-19. James Iredell, speaking at the North Carolina convention, observed:

> The propriety of having a Supreme Court in every government must be obvious to every man of reflection. There can be no other way of securing the administration of justice uniformly in the several states. There might be, otherwise, as many different adjudications on the same subject as there are states. 4, Elliot, *Debates* 147.

CONCLUSION

For all of the reasons set forth herein, review and relief should now be granted in order to address the important questions presented. In order to obtain uniformity in the construction of the constitution and to obtain equality for persons in the several states in the rights and protections secured by the constitution, Petitioners pray this Court issue its writ of certiorari and accept jurisdiction over this case.

February 26, 1996

Respectfully submitted,

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In Propria Persona

Appendices

APPENDIX A

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FILED
SEPT 21 1995

Attorneys for Plaintiff
AMERICAN GENERAL FINANCE, INC.

IN THE MUNICIPAL COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
SANTA CLARA FACILITY

AMERICAN GENERAL FINANCE, INC. *Plaintiff,*	CASE NO. DC95 31560 ORDER
vs. JOHN G. HANLIN; ANNA HANLIN; and DOES 1 through25, inclusive, *Defendants.*	Date: September 21, 1995 Time:1:30 p.m. Dept: 36

Upon reviewing Defendants' Motion to Quash Service of Summons and Complaint and Plaintiff's Opposition thereto, and good cause appearing therefore,

IT IS HEREBY ORDERED, that:

Defendants' Motion to Quash Service of Summons and Complaint is denied and Defendant John G. Hanlin and Defendant Anna Hanlin shall have until 5 days from notice of this order to file a responsive pleading.

Dated: 9/21/95

/S/ JAMIE JACOBS-MAY
JUDGE OF THE MUNICIPAL COURT

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

FILED
- SEP 21 1995

JOHN G. HANLIN and ANNA HANLIN,)
)
Petitioners,) Case No. CV 752800
vs.)
) NOTICE OF RULING
THE MUNICIPAL COURT OF THE STATE)
OF CALIFORNIA, FOR THE CITY AND)
COUNTY OF SANTA CLARA,)
)
Respondent,)
)
AMERICAN GENERAL FINANCE, INC.)
)
Real Party in)
Interest.)
)

The petition for Peremptory Writ of Mandamus and/or Prohibition is dismissed for failure to follow local procedures.

Sanctions are denied.

DATED: Oct 31, 1995

/S/ JOHN F. HERLIHY
JOHN F. HERLIHY
JUDGE OF THE SUPERIOR COURT

APPENDIX C

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

FILED
DEC 13 1995

JOHN G. HANLIN, et al.,
Petitioners,

vs.

No. H014661
Super. Ct. No. CV752800

THE SUPERIOR COURT
OF SANTA CLARA COUNTY,
Respondent;

AMERICAN GENERAL FINANCE, INC.,
Real Party in Interest.

BY THE COURT

The petition for writ of mandate, prohibition or other appropriate relief is denied.

(Premo, Acting P.J., Elia, J., and Mihara, J., participated in this decision.)

Dated Dec 13, 1995 /S/ PREMO Acting P.J.

APPENDIX D

SUPREME COURT
FILED
FEB 14 1996

Sixth Appellate District No. HO14661
S050831

IN THE SUPREME COURT OF CALIFORNIA

JOHN G. HANLIN Et Al., Petitioners

v.

SANTA CLARA COUNTY SUPERIOR COURT, Respondent

AMERICAN GENERAL FINANCE INC.,
Real Party In Interest

Petition for review DENIED.

/S/ LUCAS
Chief Justice